



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1043

[EPA-HQ-OAR-2011-0928; FRL-9619-1]

RIN 2060-XXXX

Great Lakes Steamship Repower Incentive Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to simplify an existing provision in our marine diesel engine program that is intended to encourage owners of Great Lakes steamships to repower those steamships with cleaner marine diesel engines. The simplified program would automatically permit the use of residual fuel, through December 31, 2025, in a steamship if it has been repowered with a certified Tier 2 or later marine diesel engine, provided the steamship was operated exclusively on the Great Lakes and was in service on October 30, 2009. Steamships are powered by old, inefficient steam boilers. Voluntary replacement of these boilers with modern fuel-efficient marine diesel engines would result in reductions of particulate matter and sulfur oxides, even while the replacement diesel engines are operated on higher sulfur residual fuel, and would provide human health and welfare benefits for the people who live in the Great Lakes region. Conversion to new diesel engines would also result in considerable carbon dioxide reductions and fuel savings. In the “Rules and Regulations” section of this Federal Register, we are making this modification to the Great Lakes steamship incentive program

as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by [[Insert date 30 days after publication in the Federal Register](#)].

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-HQ-OAR-2011-0928, by mail to: Environmental Protection Agency, Air Docket, Mail-code 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

PUBLIC HEARING: If anyone contacts us requesting to speak at a public hearing on or before [**INSERT DATE 15 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**], we will hold a public hearing. Additional information about the hearing would be published in a subsequent Federal Register notice.

FOR FURTHER INFORMATION CONTACT: Jean Marie Revelt, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, Michigan 48105; telephone number: 734-214-4822; fax number: 734-214-4816; email address: revelt.jean-marie@epa.gov.

SUPPLEMENTARY INFORMATION

I. Why is EPA Issuing this Proposed Rule?

This document proposes to take action on our national marine diesel emission control program. We have published a direct final rule to simplify our Great Lakes steamship repower incentive program in the “Rules and Regulations” section of this Federal Register because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the **ADDRESSES** section of this document.

II. Does This Action Apply to Me?

This action will affect companies that own steamships operating exclusively on the Great Lakes that were in service on October 30, 2009. The following table gives some examples of entities that may be affected by this rule; however, since these are only examples, you should carefully examine the regulations. You may

direct questions regarding the applicability of this action as noted in **FOR**

FURTHER INFORMATION CONTACT.

| Category | NAICS codes ^a | Examples of potentially regulated entities |
|----------|--------------------------|--|
| Industry | 483113 | Coastal and Great Lakes Freight Transportation |
| Industry | 483114 | Coastal and Great Lakes Passenger Transportation |
| Industry | 336611 | Ship building and repairing |
| Industry | 811310 | Engine repair, remanufacture, and maintenance |

^aNorth American Industry Classification System (NAICS).

III. Summary of Rule

EPA's final rule for Category 3 marine engines¹ and their fuels (75 FR 22896, April 30, 2010) exempted steamships from the sulfur limits that apply to fuel used in ships operating on the Great Lakes² beginning August 1, 2012 (40 CFR 1043.95(a)). This means steamships can continue to operate indefinitely on high sulfur residual fuel. However, because steamship engines have high emissions and low fuel efficiency, we included a provision to encourage owners of Great Lakes steamships to voluntarily replace their steam boilers with cleaner, more fuel-efficient marine diesel engines (40 CFR 1043.95(b)(4)(iv)). The current voluntary repower incentive is in the form of relief through EPA's economic hardship program, through which an owner may apply for a relaxation of the Great

¹ Category 3 marine engines are diesel engines with per cylinder displacement at or above 30 liters.

² For the purpose of this program, "Great Lakes" means all the streams, rivers, lakes, and other bodies of water that are within the drainage basin of the St. Lawrence River, west of Anticosti Island. (40 CFR 1043.20).

Lakes fuel sulfur limits for fuel used by the repowered diesel ship for a defined period of time. The use of lower price, higher sulfur residual fuel can help offset vessel repower costs.

EPA believes that the goal of repowering the fleet of Great Lakes steamships could be achieved more effectively by adding a new incentive program to provide an automatic, time-limited fuel waiver for repowered steamships. Instead of applying for relief through the economic hardship program, Great Lakes steamship owners who voluntarily repower their steamships with diesel engines would automatically qualify for a waiver that would allow the use of residual fuel in the replacement diesel engines that exceeds the global and ECA sulfur limits that otherwise apply to the fuel used in marine diesel engines operated on the U. S. portions of the Great Lakes. This automatic Great Lakes steamship repower fuel waiver would be valid through December 31, 2025; after that date, repowered steamships would be required to comply with the Great Lakes ECA fuel sulfur limits for diesel engines.³ To qualify for this automatic fuel sulfur waiver, the steamship must be exempt from existing requirements pursuant to 40 CFR 1043.95(a) in that it must operate exclusively on the Great Lakes and must have been in service on October 30, 2009, where “in service” means operating as a steamship, but is not limited to actually performing that service on that day. In addition, the replacement engine must be a Tier 2 or cleaner marine diesel engine as specified in 40 CFR 1042.104.

Voluntary replacement of steam engines with cleaner, more efficient Tier 2

³ Compliance can be through switching to ECA-compliant fuel or through the installation and use of an exhaust gas cleaning system (scrubber) or other technology or procedure that achieves equivalent sulfur emissions. See Section

or better marine diesel engines through this modification to our steamship repower incentive program would provide important air quality and energy benefits immediately, due to the improved fuel efficiency of the diesel engines, and even larger benefits in the long term, when the repowered ships will use fuel that complies with the 1,000 ppm sulfur limit on the Great Lakes.

For additional discussion of the proposed rule changes, see the direct final rule EPA has published in the “Rules and Regulations” section of today’s Federal Register. This proposal incorporates by reference all the reasoning, explanation, and regulatory text from the direct final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). This proposed rule would merely add an automatic waiver provision to encourage Great Lakes steamship owners to repower their vessels with cleaner marine diesel engines. There are no costs associated with this proposed rule because steamship owners are not required to repower their ships.

V.C of the preamble for our Category 3 FRM for a discussion of compliance strategies.

B. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information collection requirements are not enforceable until OMB approves them.

The program contained in this rule is a voluntary incentive program to encourage owners of Great Lakes steamship to repower their ships with diesel engines. A steamship owner taking advantage of the automatic fuel waiver is required to notify EPA's designated certification officer of the intention to use this provision. The notification must include a description of the project, the expected timeline, and other relevant information. The owner is also required to notify EPA's designated certification officer at completion of the project. The purpose of the reporting is to ensure that a repower has taken place, with a qualified EPA-certified engine. Because this program is voluntary, a steamship owner would provide this information only if the provision is exercised. When the project is completed, EPA will provide the owner with a statement that the repowered ship is covered by the steamship repower incentive program fuel sulfur waiver, which is to be kept onboard for compliance purposes.

There are potentially six companies affected, which own the twelve remaining diesel steamships that operate on the Great Lakes. It is not known how many of these companies will actually take advantage of the waiver, or when they would repower. However, it is likely that the repowers would occur prior to 2015, to

maximize the fuel savings afforded by the fuel sulfur waiver before it expires on December 31, 2025.

The total estimated burden associated with the automatic steamship repower incentive program is 14.0 hours annually. This is based on two steamship owners repowering two steamships in each of three years and an estimated 3.5 annual labor hours for each manufacturer to prepare and submit the required information for each ship. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the Federal Register to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business primarily engaged in shipbuilding and repairing as defined by NAICS code 336611 with 1,000 or fewer employees (based on Small Business Administration size standards); (2) a small business that is primarily engaged in freight or passenger transportation on the Great Lakes as defined by NAICS codes 483113 and 483114 with 500 or fewer employees (based on Small Business Administration size standards); (3) a small business primarily engaged in commercial and industrial machinery and equipment repair and maintenance with annual receipts less than \$7 million (based on Small Business Administration size standards); (4) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (5) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that proposed rule would not have a significant economic impact on a substantial number of small entities.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the

regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule would merely add an automatic waiver provision to encourage Great Lakes steamship owners to repower their vessels with cleaner marine diesel engines. There are no costs and therefore no regulatory burden associated with this rule because steamship owners are not required to repower their ships and can continue using their vessels indefinitely. This Great Lakes steamship repower incentive program would assist those steamship owners who choose to voluntarily repower their ships, however, by allowing them to use lower-price residual fuel in the repowered diesel ship for a specified period of time, which may help them cover the costs of the repower project. We have therefore concluded that today's final rule will not increase regulatory burden for affected small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. The action imposes no

enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule would merely add an automatic waiver provision to encourage Great Lakes steamship owners to repower their vessels with cleaner marine diesel engines. None of the thirteen U.S. steamships operating on the Great Lakes as of October 30, 2009 are owned or operated by a State, local, or tribal government.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed final rule would merely add an automatic waiver provision to encourage Great Lakes steamship owners to repower their vessels with cleaner marine diesel engines. None of the thirteen U.S. steamships operating on the Great Lakes as of October 30, 2009 are owned or operated by a State. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule would merely add an automatic waiver provision to encourage Great Lakes steamship owners to repower their vessels with cleaner marine diesel engines. None of the thirteen U.S. steamships operating on the Great Lakes as of October 30, 2009 are owned or operated by an Indian tribal government. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposed rule would merely add an automatic waiver provision to encourage Great Lakes steamship owners to repower their vessels with cleaner marine diesel engines. To the extent Great Lakes steamship owners take advantage of this incentive program, their action would provide immediate air quality and energy benefits, due to the improved fuel efficiency of the diesel engines, and even larger

benefits in the long term, when the repowered ship would use fuel that complies with the 1,000 ppm sulfur limit on the Great Lakes. These emission reductions would improve air quality for all people who live in the Great Lakes region, including children and other sensitive populations.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule would merely add an automatic waiver provision to encourage Great Lakes steamship owners to repower their vessels with cleaner marine diesel engines. To the extent Great Lakes steamship owners take advantage of this incentive program, their action

would provide immediate air quality and energy benefits, due to the improved fuel efficiency of the diesel engines, and even larger benefits in the long term, when the repowered ship would use fuel that complies with the 1,000 ppm sulfur limit on the Great Lakes. These emission reductions would improve air quality for all people who live in the Great Lakes region, including minority and low-income populations.

K. Statutory Authority

The statutory authority for this action comes from section 1903 of the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.). The Act to Prevent Pollution from Ships implements Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL) and makes those requirements enforceable domestically. Section 1903 gives the Administrator the authority to prescribe any necessary or desired regulations to carry out the provisions of Regulations 12 through 19 of MARPOL Annex VI.

List of Subjects in 40 CFR Part 1043

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Economic hardship waiver, Great Lakes, North American Emission Control Area, Reporting and recordkeeping requirements, Steamships.

Dated: January 11, 2012

Lisa P. Jackson

Administrator

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